ing any of the checks in question, and it would seem that the defendant was entitled to recover the proceeds of all. The plaintiff's right is not founded upon the ground that the moment of failure fixes the status of all the parties concerned, as the court holds, but upon the fraud of the defendant in receiving the deposits with knowledge of its insolvency. *Craigie* v. *Hadley*, 99 N. Y. 131. Where the defendant has obtained title to personal property by fraud, and afterwards disposes of the property, a constructive trust arises as to the proceeds, in favor of the former owner, so long as the proceeds can be traced. *American Co.* v. *Fancher*, 145 N. Y. 552. In the principal case, the defendant held in trust its claim against the correspondent for the proceeds of all the checks.

An interesting recent case in this connection is that of *City Bank* v. *Blackmore*, 75 Fed. Rep. 771, where, a deposit of a draft having been received with knowledge of insolvency, and forwarded to a correspondent, the latter applied the draft to reduce the indebtedness of the insolvent bank of deposit to the correspondent. After some delay, the draft was paid to the correspondent upon the express request of the plaintiff, the depositor. It was there *held* that, although the depositor would have had a right to rescind the contract of deposit on the ground of fraud by the bank receiving it, yet, having authorized the payment to the correspondent, plaintiff was estopped from denying that the title of the correspondent to the draft was good as against himself and the bank of deposit; therefore, the only ground on which the plaintiff could recover would be that the insolvent bank had been thereby enriched after the failure to the amount of the draft; but although the debt of the insolvent bank had been reduced by the amount collected, it was benefited only to the extent of the dividends to which the correspondent would have been entitled as a general creditor, and this was the measure of plaintiff's recovery.

TRUSTS — MISAPPROPRIATION OF FUND — ACTION AT LAW. — Money was deposited in a bank by a mother to the credit of herself or her son, as trustee, for the purpose of her support and burial. The son drew it out, and appropriated it to his own use, without the mother's knowledge or consent. *Held*, that the beneficiary might sue at law to recover the definite sum misappropriated, as money had and received. *Henchey* v. *Henchey*, 44 N. E. Rep. 1075 (Mass.).

Apparently, the court go on the ground that, even supposing a trust to have been created here, and accepted by the trustee, an action at law could be maintained against the trustee because his misappropriation was of a definite sum of money. This cannot be supported on principle. The defendant had accepted the trust, and it was still open. The mere fact that the subject of the trust was a known sum of money is not material. Therefore, the doctrine of the principal case might well be extended to cases where land, the subject of a trust, is sold by the trustee in violation of the terms of the trust, and an action at law ought to be allowed for the value of the land. But the law is clear, that in such a case recourse must be had to equity. *Norton* v. *Ray*, 139 Mass. 230. See *Jasper* v. *Hagen*, 1 N. Dak. 75.

REVIEWS.

A PRELIMINARY TREATISE ON EVIDENCE AT THE COMMON LAW. Part I. DEVELOPMENT OF TRIAL BY JURY. By James Bradley Thayer. Boston: Little, Brown, & Co. 1896. pp. x, 186.

These one hundred and eighty pages are only a portion of the first volume of Professor Thayer's expected treatise on the Law of Evidence. This portion may well stand by itself, however, as an important contribution to legal learning. Just how important, can probably be fully appreciated only by one already learned in the subject. At the first reading, indeed, the novice will hardly realize how many vexed and obscure points of legal antiquities are here elucidated, simply because he will, if he have a real interest in the history of English law, find it such delightfully easy reading. Every serious historical scholar nowadays tries to get at the original sources, and cite them in his book. Unfortunately, however, very few of them have the art of making the original authorities tell their

own story in a connected and intelligible manner, as Professor Thayer has made his authorities tell the story of the development of the jury in England, — "its strange and wholly peculiar course for some six or eight centuries." For the present writer to criticise Professor Thayer's learning would be absurd. But there is something more than learning to be remarked in the book. The fact that an author is learned in his subject is hardly any guaranty, to say the least, that his book will not be dry bones and dust for the general reader, and a terror to the struggling student; for both of which classes of persons Professor Thayer has partly intended at least this portion of his book. Certainly they have to thank him for making his work not only thorough and accurate, but also lucid and interesting.

Of the four chapters composing this first part, the first gives some account of the older modes of trial, things hard to understand properly at the end of the nineteenth century, but here explained graphically, yet concisely. The three following chapters give an account of the trial by jury and its development, a subject practically of the greatest use in appreciating the true nature of our present law of evidence, and yet full of curious and interesting legal antiquities. The second chapter deals with the origin and establishment in England of the jury system; the third chiefly with the ways taken to inform the jury; and the fourth chiefly of the means of controlling the jury and correcting their errors. All of these chapters, in a less finished form, have appeared in the pages of the HARVARD LAW REVIEW (Vol. V., pp. 45, 249, 295, 357).

R. G.

GOVERNMENTS AND PARTIES IN CONTINENTAL EUROPE. By A. Lawrence Lowell. Boston and New York: Houghton, Mifflin & Co. 1896. 2 vols. pp. xiv, 377, and viii. 455.

This book deals with the practical workings of Continental governments in which party divisions necessarily play an important part. The author limits himself to those countries where for various reasons the system of two parties does not exist. He gives an outline of the structure and recent history of government in France, Italy, Germany, Austria-Hungary, and Switzerland; and prints in an appendix the constitution of each country. Of matters distinctively legal, mention may be made of the account of the relations between the administrative and the ordinary courts in France and Italy.

Mr. Lowell, however, views the institutions from a governmental and political, rather than a legal standpoint. He shows how in France the subdivision of parties has rendered the ministers, who are responsible to the deputies, practically helpless, and subject to frequent changes as party coalitions shift; while in Italy the same cause has made politics rather a contest of personal cliques than of principles. In Germany the central figure is the Chancellor, whose independence of the legislative assembly reduces the parties to a position comparatively unimportant. In Austria and Hungary the bitter race feeling presents the most serious problem, a difficulty which the latter country has solved by concentrating the power in the hands of the Magyars. The unique relations of these two nations, which, though unlike in race and naturally rivals, are forced by pressure from without to stand united, form the subject of an interesting chapter. In Switzerland, the "referendum" and the "initiative" naturally attract our attention, as furnishing a basis for possible changes